Office of Chief Counsel Internal Revenue Service

memorandum

CC:WR:RMD:DEN:TL-N-7286-98

WRDavis

date: January 13, 1999

to: Chief, Examination Division, Rocky Mountain District

Attn: Case Manager, Group 1214 4214DEN

from: District Counsel, Rocky Mountain District, Denver

subject: Request for District Counsel Assistance:

Consents to extend the statute of limitations for assessment

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

We respond to your memorandum seeking our opinion as to the proper parties and language to include on consents to extend the statute of limitations on assessment for the taxable years through .

Additionally, your memorandum requests our opinion as to the proper parties and language to include on consents to extend the statute of limitations on assessment of income tax attributable to partnership items of , formerly , and for certain taxable years. Our understanding of the facts, analysis of the issues, and conclusions are set forth below.

ISSUES

- 1. What is the correct wording of a consent to extend the statute of limitations upon assessment of income tax for and Subsidiaries (taxpayer) for its taxable years and ?
- 2. Who is the correct party to sign such a consent on behalf of the taxpayer for those years?
- 3. What is the correct wording of a consent to extend the statute of limitations upon assessment of income tax attributable to partnership items from the four following partnerships?



4. Who is the correct party to sign a consent on behalf of each of the afore-listed partnerships?

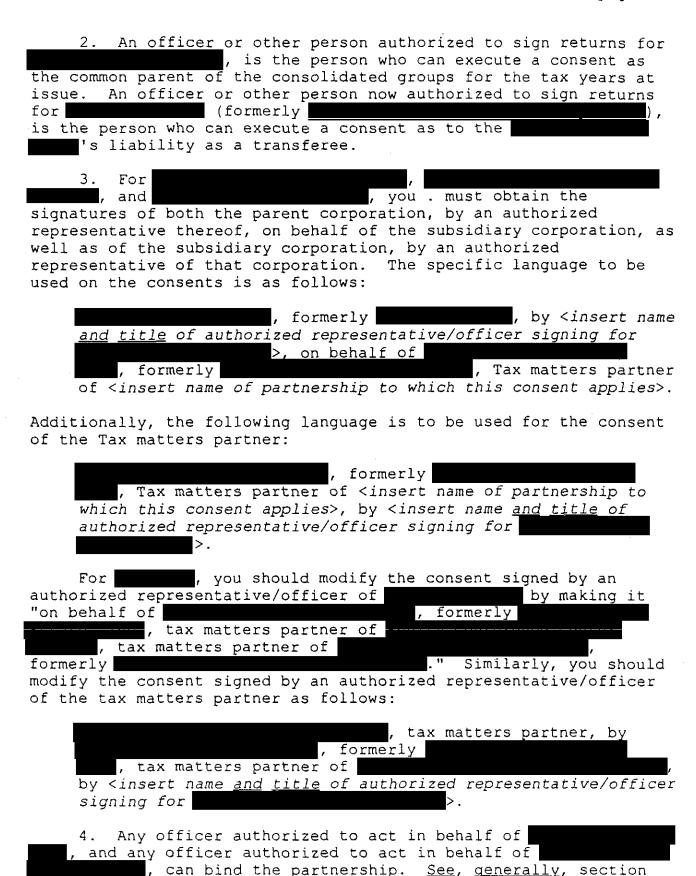
CONCLUSIONS

1. (formerly) is
severally liable for the entire amount of the consolidated
liabilities of the and Subsidiaries consolidated
group for the tax years,, and We recommend that
you identify the taxpayer to which the consent to extend applies as
" (E.I.N.:
), as alternative agent under Treas. Reg. § 1.1502-77T for
the & Subsidiaries consolidated group." Put an
asterisk here and also at the bottom of the page, to reference the
following footnote: "With regard to the consolidated tax
liabilities of & Subsidiaries consolidated group for
the taxable years,, and"
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We also recommend that you obtain the consent of

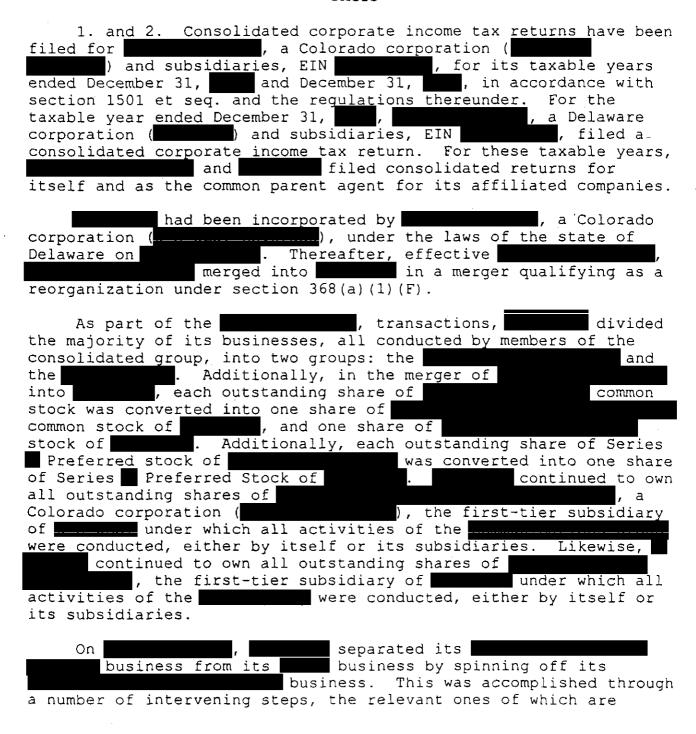
(formerly) to extend the statute of limitations on its liability as a transferee at law, because it is the transferee of certain assets of

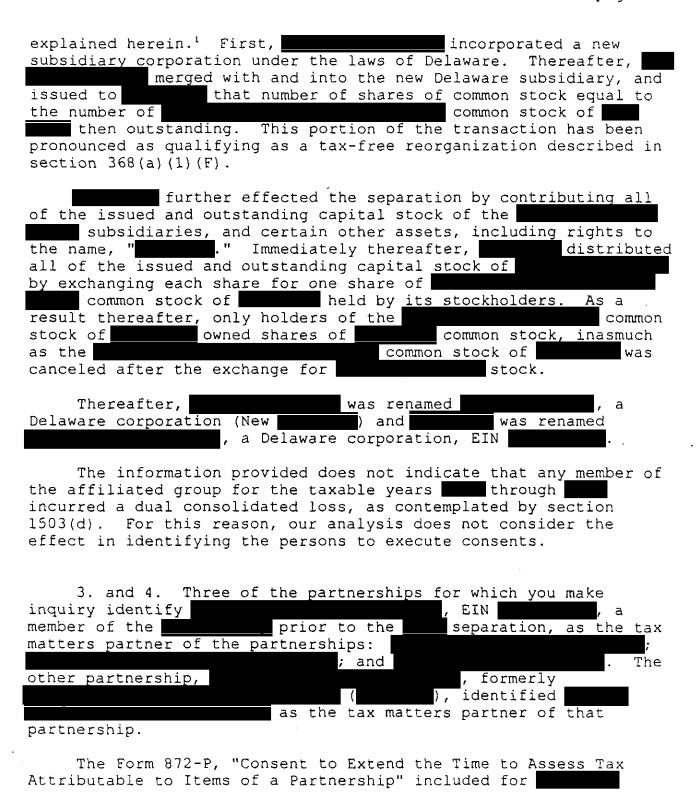
(formerly), and is liable as a transferee for 's liabilities to the extent of the value of the assets it received in the transfer. Form 977 provides an appropriate vehicle for obtaining such consent. A copy of a blank Form 977 is attached.



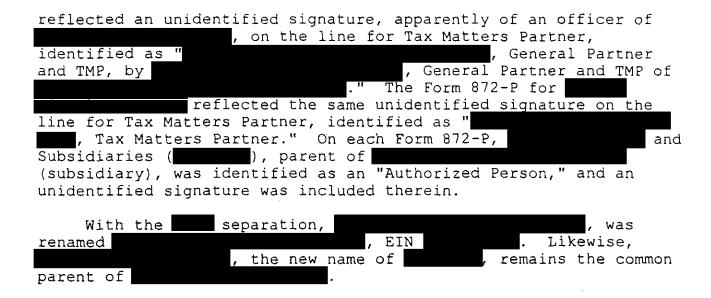
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FACTS





The details of the transactions are set forth in Priv. Ltr. Rul. 121669-97 (Mar. 27, 1998), a copy of which is attached.



ANALYSIS

1. and 2. Generally, section 6501(a) limits assessment of income tax to the period ending three years after the return for that tax period is filed. Among the exceptions to this three-year rule, the consent of both the Service and the taxpayer, in writing, to an extension of this period for assessment will extend this period when such an agreement is executed before the expiration of the assessment period. Section 6501(c)(4).

Generally, section 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return. Rev. Rul. 83-41, 1983-1 C.B. 349.

Where a corporate taxpayer stands as the common parent of an affiliated group of corporations, as defined by section 1504(a), it and the members of the affiliated group may, under certain circumstances, elect to file a consolidated return under section 1501 et seq.

Treas. Reg. § 1.1502-77(a) describes the scope of a common parent corporation's agency. There, with the exception of the consent of the members of the affiliated group to consent to filing a consolidated return as part of an affiliated group, and three other circumstances not relevant here, the regulation makes the common parent

the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. . . The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. \$1.1502-77(a)\$ (emphasis added).

Additionally, the regulation specifies the effect of a waiver given by the common parent, stating that

Unless the district director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made or levy or proceeding in court begun in respect of the tax for a consolidated return year shall be applicable—

(1) To each corporation which was a member of the group during any part of such taxable year,

and

(2) To each corporation the income of which was included in the consolidated return for such taxable year, notwithstanding that the tax liability of any such corporation is subsequently computed on the basis of a separate return under the provisions of \$1.1502-75.

Treas. Reg. \$1.1502-77(c).

The corporation formerly known as, which was the
common parent of the affiliated group filing consolidated return
for, changed its name to, subsequent to
the spin-off of 's business conducted by the
. This being the case, Treas. Reg. § 1.1502-77 makes clear
that the common parent for that year remains the agent for members
of the group for that year so long as it does not go out of
existence. Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985).

Under Temp. Treas. Reg. § 1.1502-77T, alternative agents of the affiliated group may act for it where the common parent of the group ceases to be the common parent, regardless of whether the group remains in existence under Treas. Reg. § 1.1502-75(d). Here, it may be argued that the name change of to and the change in place of organization of (a Colorado corporation) to (a Delaware corporation), constitutes a cessation of the former common parent's

existence for the consolidated returns filed for $\frac{1}{2}$, $\frac{1}{2}$, and However, under that regulation, if the group remains in existence under Treas. Reg. § 1.1502-75 (d) (2) or (3), the common parent of the group at the time the notice is mailed or the waiver given serves as an alternative agent of the group. Temp. Treas. Reg. § 1.1502-77T (a) (4) (iv).

The regulation referenced therein specifically holds that "the common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation (see section 368(a)(1)(F)." Treas. Reg. § 1.1502-75(d)(2)(i). Under these facts, the mere change in identity effected by the merger of into ______, and by the name change of ______ to _____, does not change these corporation's positions as the common parent of ______ and subsidiaries that filed consolidated returns for _____, and _____.

We recommend that you submit the consents to one of the authorized officers of " , formerly named (E.I.N.:), as alternative agent under Treas. Reg. § 1.1502-77T for the Subsidiaries consolidated group." We further recommend that you identify the taxpayers whose limitations on assessment are to be extended by the consent by attaching a rider to the Forms 872 identifying each of the corporations that were included in the group for the year(s) for which the statute is extended.

As a result of the spin-off, (New spin-off, be liable as a transferee at law for income tax of spin-off, to the extent consolidated group for years prior to the spin-off, to the extent of the assets transferred to it. To extend the Service's statute of limitations for asserting transferee liability against New spin-off, we recommend that you obtain its consent to an extension of the statute of limitations. To do so, you should use Form 977, "Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary." In the space for the transferee, identify New as " formerly named (E.I.N.:)." Identify the transferor as "the Subsidiaries consolidated group," and the tax periods as , and ..., and

3. and 4. Each of the partnerships for which you seek advice had partners other than natural persons. For this reason, none of the partnerships could have qualified under the small partnership exception, set forth at section 6231(a)(1)(B)(i), that applied to partnership taxable years ending before ______. For this reason, the unified partnership audit procedures, set forth at

section 6221 et seq., apply to the issues raised in your request.

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In general, the period for assessing any income tax attributable to any "partnership item" or "affected item," as defined in section 6231(a)(3) and (a)(5), respectively, shall not expire before the date which is 3 years after the later of the date on which the partnership return for that taxable year was filed, or the last day for filing such return (i.e., the due date). Section 6229(a); Cambridge Research & Dev. Group v. Commissioner, 97 T.C. 287, 292 (1991).

The period of limitations for making such assessments may be extended by agreement. For one, it can be extended with respect to any partner by an agreement entered into by that partner and the Service. Section 6229(b)(1)(A).

Beyond that, an agreement can extend the period of limitations for all partners when the agreement is entered into by the Service and the tax matters partner, or by the Service and any other person authorized by the partnership in writing to enter into such an agreement. Section 6229(b)(1)(B).

Section 6231(a)(7), as relevant here, defines the tax matters partner of any partnership as the general partner designated as the tax matters partner as provided in regulations. Section 6231(a)(7)(A). Treas. Reg. § 301.6231(a)(7)-1(c) provides that "The partnership may designate a tax matters partner for a partnership taxable year on the partnership return for that taxable year in accordance with the instructions for that form." It appears that the partnerships here have done this.

Specific rules set forth the conditions under which the designation of a tax matters partner is terminated. In general such designations remain in effect until

- (i) The death of the designated tax matters partner;
- (ii) An adjudication by a court of competent jurisdiction that the individual designated as the tax matters partner is no longer capable of managing the individual's person or estate;
- (iii) The liquidation or dissolution of the tax matters partner, if the tax matters partner is an entity;
- (iv) The partnership items of the tax matters partner become nonpartnership items under section 6231(c) (relating to special enforcement areas); or
- (v) The day on which--

- (A) The resignation of the tax matters partner under paragraph (i) of this section [Treas. Reg. 301.6231(a)(7)-1];
- (B) A subsequent designation under paragraph (d), (e), or(f) of this section; or
- (C) A revocation of the designation under paragraph (j) of this section becomes effective.

Treas. Reg. \$301.6231(a)(7)-1.

In the case of the four partnerships for which advice is sought, we note that the tax matters partner of three of them, changed its name as part of the spin-off of the . However, that corporation did not undergo a liquidation or dissolution, and thus, remains the tax matters partner of the partnerships unless and until something changes that status (see, e.g., Treas. Reg. § 301.6231(a)(7)-1(c) through -1(g)).

The two consents contain signatures, presumably of officers or agents of ______, identified as an Authorized Person to consent to the extension. This conforms to the Service's policy to require the consent of the common parent corporation filing a consolidated return under section 1501 where the tax matters partner is a subsidiary member of the affiliated group filing the consolidated return. Because Treas. Reg. § 1.1502-77(a) makes the common parent the sole agent for each subsidiary in the group, and removes the authority of the subsidiary to act for itself with respect to its own tax liability, the Service takes the position that this consent is necessary to make the consent extending the statute of limitations binding on the tax matters partner and, by consolidation, on the common parent.

Please refer questions regarding this memorandum to Bill Davis at (303) 844-3258.

MARTIN B. KAYE District Counsel

By:

Agsistant District Counsel

Attachment